LINA & GUIA
ATTORNEYS AT LAW

Legal update by reference
to the months of **January** and **February 2011**

Legal Brief
Lina & Guia SCA

Real estate

Modifications to the legal framework on territorial management and urbanism

Government`s Emergency Decision no. 7/2011 for amending and supplementing Law no. 350/2001 on territorial management and urbanism (published in the Official Gazette no. 111 of 11 February 2011)

Most relevant provisions of the new decision refer to the following:

1. Redefining the responsibilities and attributes of central and local public authorities regarding the territorial management and urbanism: New articles and completions were introduced regarding the attributions of the president of the County Council and of the mayor, as well as activity of the chief-architect.

2. Possibility of communes to associate for organizing in common the specialised structure on the territorial management and urbanism: The communes which do not have a specialised structure can either: (i) form intercommunity development associations together with other communes or towns, for assuring in common the public services on urban and territorial planning, issuance of urban certificates and building permits, or (ii) delegate the respective attributions to the specialised structure on county level, based on an agreement.

3. Changes in the framework for modifying the urban planning documentations: Such can be made by realisation and approval of a detailed urbanism plan (PUD) or a zonal urbanism plan (PUZ), as case may be. Realisation of a new zonal urbanism plan can be initiated also by a private investor, for the following constructions: industrial, technological or commercial parks, supermarkets, hypermarkets, areas of production, development of new residential areas, transport infrastructure, in case the *intra muros* area is extended with at least 10,000 sq.m. for residential functions and at least 5,000 sq.m. for production or services functions. The new zonal urbanism plan can be initiated only after a notice of opportunity is issued by the chief architect and approved by the authorities in charge.

4. Extension of the general urbanism plan validity term: Newly introduced provisions expressly provide for possibility of extending the validity term for a period no longer than 2 years, until the enforcement of the new urbanism plan. For the communes or cities with a population under 10,000 citizens, if an update is not necessary, the validity period can be directly extended with

maximum 3 years, based on the advice of the county chief-architect.

5. New list of areas for which issuance of a zonal urbanism plan (PUZ) is compulsory: central areas of localities, built protected areas, industrial activities and technological parks, areas designed for hypermarkets and/or commercial parks, production areas, cultural parks, transport infrastructure, new areas of residential development, areas subject to restructuring or urban regeneration, coastal area or the shore protection area, for a minimum depth of 200 m; other areas established by the public authorities for homogenous areas or for areas larger than 10.000 sq.m.

6. Interdiction to obtain legality status for constructions erected illegally: Starting with 1 January 2012, it is forbidden to initiate and approve urban planning documentations whose purpose is to obtain compliance for constructions built without permit or without observing the building permit.

7. Annulment of decisions approving urban planning documentation issued without observance of the law is to be required by the prefect.

Order no. 2701/2010 of the Ministry of Regional Development and Tourism approving the Methodology of information and consultation of the public on the matter of elaboration or reviewing the plans of territory management and urbanism (published in the Official Gazette no. 47 of 19 January 2011)

The methodology determines the mandatory components of the information and consultation of the public on the matter of elaboration or reviewing the plans of territory management and urbanism. For the urban planning documentations in course of elaboration or approval, depending upon their status, the local authorities will inform and consult the affected public, before submitting the documentation to the approval of the local (county, Bucharest) council, however without taking up the entire procedure.

The urban planning documentations approved without respecting the new methodology are null and void.

The Chambers for Agriculture

Law no. 283/2010 regarding the chambers for agriculture, forestry and rural development (published in the Official Gazette no. 15 of 7 January 2011)

The agricultural chambers are institutions of public utility, non-profit, with legal personality, founded for representing, promoting and protecting the interests of agriculture, forestry and zootechny. The chambers will be organized at local, county, regional and national level, and are elected by the entrepreneurs which are either registered in the respective fields or members of the professional organisations.

The local agricultural chambers have the following attributions:

- advise on removal of lands from the agricultural circuit;

- elaborate the documentations for change of the lands' category of use;
- elaborate the documentations for registration in the land book of the agricultural and forest lands;
- advise cutting the walnut trees outside the forestry areas;
- advise cutting the trees in plantations outside the forestry areas.

Methodological norms on expropriation for public utility

Government Decision no. 53/2011 approving the Methodological Norms for application of Law no. 255/2010 on expropriation for public utility required for developments of national, county or local interest (published in the Official Gazette no. 84 of 1 February 2011)

The methodological norms are issued for application of Law no. 255/2010, which was presented in detail in our November-December 2010 newsletter. The norms include provisions regarding: the steps of the expropriation procedure; the payment of the compensations to the former owners; the cadastral documentation; the access of the expropriator to the land subject to expropriation; functioning of the commission for examining the ownership right or other real estate rights; issuance of various advices, agreements, certificates and permits.

The methodological norms specifies that the public utility works listed in Law no. 255/2010 include all the preliminary works, all execution works as well as the works subsequent to the operations of building, rehabilitation, development, modernization, deviation, extension, arrangement etc.

Antitrust and Competition

The Competition Council issued instructions on commitments in the field of economic concentrations and in cases of anti-competitive practices

Competition Council Order no. 688/2010 implementing the Instructions on commitments in the field of economic concentrations (published in the Official Gazette no. 1 of 3 January 2011)

The Competition Law no. 21/1996 stipulates the possibility of the Competition Council to declare an economic concentration compatible with a competitive environment after commitments are made by the parties. The term "commitment" defines particular changes proposed by the parties to be brought to economic concentrations in order to eliminate the competition problems identified by the Council. The instructions aim at providing guidance with respect to the commitments the parties undertake, laying down the general principles of commitments, the types of commitments, the procedural aspects and conditions of validity regarding the proposed commitments,

and the conditions for commitments' implementation.

I. General Principles

In case an economic concentration generates significant obstacles to effective competition on a market or on a relevant part of a market, especially by creating or consolidating a dominant position, the parties can try to modify the economic concentration through a commitment and, therefore, to obtain the Competition Council authorization for the operation.

While the Competition Council informs the parties about the identified competition problems, commitments can be proposed only by the parties. The Competition Council cannot unilaterally impose any condition with the scope to authorize the concentration. The Competition Council has the duty to evaluate the proposed commitment's capacity to eliminate the impediments to competition and, in this respect, it is mandatory for the parties to provide all the necessary information, according to the form attached to the instructions.

The Competition Council can accept only the commitments which make the economic concentration compatible with a normal competitive environment, preventing significant obstacles to an effective competition. The commitments have to eliminate entirely the competition problems and are required to be complete and effective from all points of view. Moreover, they must be effectively implementable in a short period of time.

II. Types of agreements

The commitments are of two major types: structural and behavioural. The structural commitments are preferable, as they do not require monitoring on the medium and long term. The instructions give certain examples of commitments, as follows:

A) Transfer of an activity to an adequate buyer

In case an economic concentration is prone to cause impediments to effective competition, transfer is the most effective way to maintain competition, except for declaring the concentration as incompatible with a normal competitive environment. This commitment requires the parties to the concentration to create a new competing entity or to consolidate existing competitors, by transferring a viable and competitive activity.

B) Elimination of relationship with competitors

Elimination of the structural connection with a competitor can require cessation of the minority stake within a competitor or a company owned in common. The Competition Council can exceptionally approve only waiving the rights related to minority stakes if, by considering the characteristics of the case, the incomes generated by the minority stakes do not affect competition. However, in such case the minority stakeholder has to waive completely and permanently all rights relevant for their competition behaviour, as the administrative rights, veto power and rights to be informed.

C) Other types of commitments

The effectiveness and efficiency of other commitments will be assessed in comparison with the standard of the transfer commitments (either of activity or minority stake). Consequently, the Competition Council may accept other types of commitments only if the proposed alternative is at least as efficient as a transfer would be. The instructions mention in this category the commitments of access (to infrastructures, important networks and technologies, intellectual property rights), of modifying long-term exclusive contracts and of behaviour.

III. Procedural aspects

The parties may submit commitment proposals to the Competition Council in two phases of the procedure.

In the first phase, the commitments have to be proposed before the date when notification is declared effective or within two weeks from that date. The Competition Council may declare the concentration as compatible with a normal competitive environment provided that, following commitments, the operation no longer presents serious doubts regarding such compatibility. If the parties' commitments did not eliminate the serious doubts regarding compatibility with a normal competitive environment, the Competition Council will decide commencement of an investigation.

In the second phase, the parties may submit proposals for commitments to the Competition Council within 30 days from the opening date of the investigation. If the assessment confirms that the commitments make the concentration compatible with a normal competitive environment, the Competition Council will issue a conditional approval decision, by which will determine the obligations and/or conditions meant to assure the parties' compliance with their commitments. If the assessment leads to the conclusion that the commitments are not sufficient to address the competition issues raised by the concentration, the Competition Council shall issue a decision that declares the economic concentration incompatible with a normal competitive environment.

Competition Council Order no. 724/2010 implementing the Instructions on the conditions, terms and procedure for acceptance and evaluation of the commitments, in cases of anti-competitive practices (published in the Official Gazette no. 11 of 5 January 2011)

In accordance with the Competition Law no. 21/1996, during the investigation procedure regarding a potential anti-competitive practice, the investigated parties can propose to the Competition Council commitments with a view to eliminate the situation that led to the investigation.

The initiative of proposing commitments belongs exclusively to the investigated enterprises, which have the freedom to decide on the nature, content, timing or other relevant elements of the commitments they propose.

If the commitments are accepted by the Competition Council, the authority will issue a decision binding the investigated parties to respect such commitments for a determined period of time, and will practically close the investigation without applying any sanction provided by the law. The main advantages of the commitments are: (i) they do not represent acknowledgment of any breach of the law, (ii) they cannot be used by the Council to subsequently prove such breach of the law, and (iii) they eliminate the stress generated by the duration of the investigation and the risk of a sanction.

The closure of an investigation by a decision to accept undertakings is however an exceptional situation. Therefore, the use of commitments should be limited to those situations where it is clear that enterprises' intervention, by voluntarily assuming and implementing commitments, will lead to a restoration of the normal competitive environment either fast and durable, or in a more efficient manner than it would be achieved by issuing a decision finding an infringement, imposing a fine and/or corrective measures. Anyhow, the Competition Council will not accept commitments in

those cases in which it considers, at its discretion, that a sanction would better meet the objectives of competition policy.

The Instructions set certain conditions requested to a commitment in order to be considered by the Competition Council:

- to be submitted in writing and signed by legal representative of the company or by a person who is expressly empowered for that purpose. If involvement of third parties is necessary for implementing or monitoring the commitments, the proposal should also include the contracts between the parties and the third parties;
- to be submitted within the deadline granted by the Competition Council;
- to represent a proposal which is serious, firm, unambiguous, accurate, complete, unconditional and irrevocable during the review of proposals made by the Competition Council;
- to include explanations of how the commitments, individually and as a whole, remove the situation which led to the investigation;
- to include details about the monitoring mechanism, when case;
- to be accompanied by a non-confidential version of the proposed commitments.

The decision of accepting commitments will clearly specify the period for which the enterprise is bound by those commitments. The obligation to respect them ceases at the expiration of the period mentioned in the decision.

State Aid

Community financial assistance to projects in the field of energy

Regulation (EU) no. 1233/2010 of the European Parliament and of the Council, of 15 December 2010 amending Regulation (EC) no. 663/2009 establishing a program to aid economic recovery by granting Community financial assistance to projects in the field of energy (published in the European Union's Official Journal no. L346 of 30 December 2010)

Pursuant to the fact that Regulation no. 663/2009 has established a programme to aid economic recovery in Europe by granting EUR 3.98 billion for 2009 and 2010 to projects in the field of energy, in particular gas and electricity infrastructure, offshore wind electricity and carbon capture and storage (CCS), the new Regulation aims at completing the procedures already initiated under Regulation 663/2009.

Regulation (EU) no. 1233/2010 has the purpose of amending several articles of the previous regulation, as well as inserting new provisions regarding financial support.

Moreover, the Regulation inserts the obligation of the Commission to submit to the European Parliament and to the Council a mid-term evaluation report on the measures taken under Chapter II, by 30 June 2013, particularly referring to:

(a) the cost-effectiveness, leverage effect and added value demonstrated by the facility;
(b) evidence of sound financial management;

(c) the extent to which the facility has achieved the objectives set out in the Regulation;
(d) the extent to which continued support under the facility for projects relating to energy efficiency and energy from renewable sources is required.

Considering the all-mentioned-above, the Regulation also stipulated a certain procedure of implementation and particular funding conditions of eligibility and selection criteria. In what concerns selection of projects, particular attention shall be paid to the geographical balance. Regarding financing of investment projects, reaching a significant leverage factor between the total investments and the Union funding is a factor to be taken into consideration, in order for such investments to be significant at the Union level.

Employment and Social Security Law

Social contributions – minimum contribution value found unconstitutional

Decision of the Constitutional Court no. 1394/2010 regarding the unconstitutionality of art. 257 paragraph 2 letter f) of Law no. 95/2006 on the reform of the health system (published in the Official Gazette no. 863 of 23 December 2010)

Through its decision, the Court found that establishing a minimal value of the contributions to the social security fund in the amount of one minimal gross wage is unconstitutional. In its ruling, the Court stated that this provision is contrary to the principle of equality of citizens. It was argued that imposing a different treatment for identical situations, not taking into account the actual contributive capacity of the taxpayer, is a breach of the principle mentioned above. The Court also indicated that the provisions analyzed might lead to an obligation for the insured person to contribute with more than its income. Such a provision cannot be considered to ensure the proportionality and reasonable character of tax obligations.

Social insurance contributions for 2011

Law no. 287/2010 of the state social insurance budget for 2011 (published in the Official Gazette no. 880 of 28 December 2010)

Law no. 287/2010 establishes the contributions to the state social insurance budget, to the unemployment insurance budget, but also several other contributions paid from the state budget.

According to Law no. 287/2010, the state social insurance budget is established on the basis of an average reference salary of 2,022 lei. The contribution to the state social insurance budget varies from 31.3% - for normal working conditions to 41.3% - for special working conditions. Contributions to the unemployment insurance budget vary from 0.5% to 1%, depending what category the tax-payer belongs to. Contributions owed by the employers according to the risk class vary from 0.15% to 0.85% and are applied to the gross monthly income.

Amendments to record keeping and registration of employment related operations

Emergency Government Ordinance no. 123/2010 repealing Law no. 130/1999 regarding several measures of protecting employees (published in the Official Gazette no. 888 of 30 December 2010)

As a result of repealing Law no. 130/1999, documents regarding the execution, modification, suspension or termination of individual labour agreements no longer have to be submitted to the territorial labour inspectorate.

Consequently, starting with 1 January 2011, employers are no longer required to pay the 0.75% - 0.25% tax previously owed to the territorial labour inspectorate for registry check-up services.

Changes to the official nomenclature of occupations

Government Decision no. 1352/2010 regarding the approval of the structure of the Classification of Occupations in Romania – base level group, according to the International Standard Classification of Occupations – ISCO 08 (published in the Official Gazette no. 894 of 30 December 2010)

A new classification of occupations in Romania has been approved. The occupations are grouped as follows: (i) members of the legislative body, of the Government, high public officials; (ii) specialists in different areas; (iii) technicians and other specialist in the technical field; (iv) public workers; (v) qualified workers in the services field; (vi) qualified workers in agriculture, fishing and forestry; (vii) qualified and assimilated workers; (viii) machines and installation operators; (ix) unqualified/blue collar workers; (x) the armed forces.

The classification has also been completed by Order no. 1759 of the Minister of Labour, Family and Social Protection. The Order has added 62 new occupations, including: direct sales agent, social economy entrepreneur, professional personal assistant, maintenance personal assistant, buildings energy auditor, debt collector, human resources consultant, specialized tutor, social worker, banking and finance anti-fraud officer, lifeguard, rescue diver.

Significant changes to the public pensions' system

Law no. 263/2010 regarding the unitary pension system (published in the Official Gazette no. 852 of 20 December 2010)

Law no. 263/2010 is rather controversial, having generated significant discussions prior to its coming into force. Passing this law has had significant impact as far as the pensions system is concerned, major changes being brought in respect to broadening the scope of individuals caught under the obligation of contributing to the pension insurance budget, restricting access to anticipated pension (including partial anticipated pension), increasing the minimum pension age, implementing stricter criteria as far as granting invalidity pensions is concerned.

One of the main directions of the reform is increasing the standard pension age for men and women. Law no. 263/2010 establishes that the minimum pension age is 63 years for women and 65 years for men. These thresholds will be reached by a gradual increase of the pension age. In addition to this, the minimum contribution period is set at 15 years for both men and women, threshold that will also be reached gradually. The complete contribution period is set at 35 years and it will be reached by a gradual increase.

Special provisions are set out for workers in the field of National Defence system, Public Order and National Safety.

Pensions established through special laws have been recalculated on the basis of the principle of contribution.

The pension point value has been set at 732.8 RON, being established that starting with 1 January 2012 the pension point value will be indexed annually with 100% of the inflation rate and an additional 50% of the effective increase of the average gross salary of the previous year. Should one of these indicators be negative, only the other one will be applied in that year. If both of the indicators are negative, the pension point value will remain at the previous year's level.

In respect to anticipated retirement, Law no. 263/2010 provides that a person can benefit from an early pension only stating with 5 years prior to reaching the standard pension age and only if they have completed a contribution period 8 years higher than the complete contribution period (of 35 years).

The partial early pension can be granted if the applicant has exceeded the complete contribution period by not more than 8 years, but in the 5 years prior to reaching the standard pension age. However, for each month of early pension an penalty of 0.75% will be applied.

Banking

New amendments brought to the regime of credit agreements for consumers

Law no. 288/2010 approving Government Emergency Ordinance no. 50/2010 on credit agreements for consumers (published in the Official Gazette no. 888 of 30 December 2010)

Through the aforementioned law, which came into force on 2 January 2011, there have been introduced a series of amendments to the Government Emergency Ordinance no. 50/2010 (the "Ordinance"). The main amendment establishes that the Ordinance shall no longer be applicable to credit contracts ongoing on the date when the ordinance came into force, namely 21 June 2010, with the following exceptions:

- in the event that the consumer should request the refinancing of the credit from the same bank, provided he/she met all his/her payment obligations, the bank shall examine the request and depending on the consumer's financial situation, shall decide upon granting the refinancing credit, by observing all the conditions of the new crediting offer;
- in the event of an early reimbursement of the credit, the provisions of the Ordinance with respect to the conditions and the costs of early reimbursement shall also apply to consumers with contracts that are in progress on the date of the Ordinance's coming into force. Among such relevant provisions we mention: the equitable decrease of the credit's total cost, the prohibition of conditioning the credit's early reimbursement on the payment of a minimum amount or the equivalent value of an established number of installments, eliminating the early reimbursement fee in case of variable interest credits and limiting the same to a maximum of 1% of the amount reimbursed in advance in the case of fixed interest credits.

Among the amendments carried out by this law, the following should be mentioned:

(a) the credit agreements have to contain complete, clear and easy to understand information, in Romanian language. Before signing the agreement, on consumer's request, the information have to be detailed or additionally explained by the bank in an notice added to the agreement;
(b) the application analysis commission and unique commission have to be established at a fix amount;
(c) the administration fee shall be perceived by the creditor for monitoring/ registering/carrying out the transactions for the use/reimbursement of the credit granted to the consumer;
(d) the provision by which the interest margin can be modified only following legislative amendments imposing expressly this modification is repealed;
(e) it is mandatory for the credit agreement to specify the type of interest: fixed or variable;
(f) the pre-contractual information has to include also a warning regarding the consequences of non-performing the payments, referring to the time frame the reports are sent to the Credit Office and the minimum time period within which the creditor can initiate the enforcement;
(g) the pre-contractual information can be provided also on a durable support, and the way in which the document is drafted has to fulfill certain characteristics established by the law: the information provided should not mislead the consumers by using technical, legal or

banking and financial specific expressions, by using acronyms or initials of certain words, except for those provided by the law or common language. At consumer's request, the technical expressions have to be explained in writing, without additional costs;

(h) the consumers have the right to choose the way of the reimbursement: by equal installments (annuities) or by decreasing installments. Also, the consumers have the right to an early reimbursement of a credit without being conditioned by the payment of a minimum amount or by a certain number of installments;

(i) it is forbidden to charge commissions, bank fees or any other expenses in case the consumer wants to change the maturity date of the installment. Also, it is forbidden for the creditors to charge the consumers for changing the guaranties if the consumers have paid all the related costs for the evaluation and the constitution of the guarantee;

(j) the credit contracts cannot be concluded outside the working points set up for this specific purpose;

(k) creditors must inform the National Bank of Romania, within 2 business days, on the sanctions that shall be applied by the National Authority for Consumer's Protection for breach of the emergency ordinance provisions.

New guarantee ceiling for bank deposits and other modifications regarding the Bank Deposit Guarantee Fund

The Government Emergency Ordinance no. 131/2010 modifying and amending the Government Ordinance no. 39/1996 regarding setting up and functioning of Bank Deposits Guarantee Fund (published in the Official Gazette no. 893 of 30 December 2010)

The aforementioned ordinance transposes into national legislation the provisions of Directive 2009/14/EC amending Directive 94/19/EC on deposit-guarantee schemes as regards the guarantee ceiling and the compensation payout.

As a result, the guarantee ceiling for the bank deposits was increased from the limit of 50,000 Euro to the equivalent in lei of 100,000 euro, applicable starting from 31 December 2010, according to Directive 2009/14/EC.

The new ordinance also creates a "Special fund for indemnifications", which is managed by the Bank Deposits Guarantee Fund. The new fund is set up for indemnifying the persons prejudiced by the measures disposed and implemented during the special administration period.

According to the recent amendments, the credit institutions have to pay the annual subscription to the Deposits Guarantee Fund until the date of 30 June, and not until the date of 30 April, as it was previously provided by Government Ordinance no. 39/1996. The annual subscription paid by the credit institutions are recognized as tax deductible expenses.

LINA & GUIA
ATTORNEYS AT LAW

Contact Information

Lina & Guia SCA

Victoria Center, 9th floor
145 Calea Victoriei, 010072 Bucharest 1

Phone: +40 21 311 2561
Fax: +40 21 311 2562
E-mail: **office@lina-guia.ro**
Web: **www.lina-guia.ro**

Mihai Guia
Managing Partner
Mihai.Guia@lina-guia.ro

Cristian Lina
Managing Partner
Cristian.Lina@lina-guia.ro

Adrian Iordache
Partner
Adrian.Iordache@lina-guia.ro

Cristian Guia
Partner
Cristian.Guia@lina-guia.ro

*You will also be able to consult this Legal Brief, and our other newsletters, in the **News/Publications** section of our website.*